

AGREEMENT BY AND BETWEEN  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
AND CITY OF CORTLAND, NEW YORK, REGARDING BUCKBEE-MEARS CO. SITE

WHEREAS, the United States Environmental Protection Agency ("EPA") performed a cleanup response action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), 42 U.S.C. §§ 9601-9675, at the Buckbee-Mears Co. Site, a former manufacturing facility including approximately 50 acres of real property and any buildings and improvements located thereon, at 30 Kellogg Road, Cortland County, City of Cortland, New York (hereinafter the "Site"); and

WHEREAS, the City of Cortland ("City") has a lien against real property included within the Site more particularly described as Tax Map Parcel Number 87.78-01-01.000 on the Cortland County Tax Map, street address 30 Kellogg Road, City of Cortland, State of New York (the "City Property") for unpaid ad valorem real property taxes, which totaled approximately \$1.2 million (hereinafter, "City's Tax Lien") as of December 31, 2011; and

WHEREAS, this City Property has been in the wholly exempt section of the tax rolls since September 15, 2009; and

WHEREAS, the County of Cortland ("County") has a lien against real property more particularly described as Tax Map Parcel Number 97.00-01-02.000 on the Cortland County Tax Map, street address 3727 Kellogg Road, Town of Cortlandville, State of New York, (the "Town Property"), for unpaid ad valorem real property taxes, which totaled approximately \$5,727.28 (hereinafter, "County's Tax Lien") as of December 31, 2011. In addition to the City Property, the Site encompasses a portion of the Town Property. The City Property and Town Property are collectively referred to herein as the "Properties"; and

WHEREAS, the State Bank of India, New York Branch (the "Bank") has alleged that IED owes it approximately \$8.4 million under a Credit Agreement, that the Bank holds a Mortgage and Security Agreement given by IED on the Properties, and that IED is in default on such loans, and the Bank has initiated a foreclosure action on the Properties in the Cortland County Supreme Court; and

WHEREAS, pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), the United States of America, on behalf of EPA, has a lien against each of the Properties in the amount of the total response costs it has incurred in connection with EPA's response action at the Site, which lien amount, exclusive of interest, was, as of December 31, 2011, approximately \$8.3 million (hereinafter, "CERCLA Lien"); and

WHEREAS, pursuant to Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), a windfall lien may arise against the Properties in the amount of any increase in the Properties' fair market value due to EPA's response action at the Site (hereinafter, "Windfall Lien"); and

WHEREAS, the Properties are owned by International Electron Devices (USA), LLC ("IED"), IED has abandoned the Properties, and neither IED nor its principals or their representatives have resolved the City's Tax Lien, the County's Tax Lien, EPA's CERCLA Lien, or EPA's potential Windfall Lien; and

WHEREAS, pursuant to federal statutes codified at 28 U.S.C § 2410(c), the United States would have a one-year right to redeem if the City Property or the Town Property was sold to satisfy the City's Tax Lien or the County's Tax Lien, respectively; and

WHEREAS, EPA and the Bank may enter into a settlement agreement ("Bank Agreement"), and EPA and the County may enter into a settlement agreement ("County Agreement"), in an effort to facilitate the foreclosure, sale, and redevelopment of the Properties; and

WHEREAS, the City will cooperate with the Bank, the County, and/or EPA, as applicable, to facilitate the sale of the Properties, in accordance with this agreement ("Municipality Agreement"), and with the County Agreement and/or Bank Agreement, whichever has been finalized; and

WHEREAS, the City desires that EPA remove its CERCLA Lien, waive its right of redemption in order to facilitate recovery of response costs and redevelopment through the sale of the Properties, and waive its potential Windfall Lien; and

WHEREAS, EPA supports the redevelopment of former Superfund sites and is willing to remove its lien and waive its right of redemption in consideration of the payments for reimbursement of response costs required pursuant to the Bank Agreement, the County Agreement, and this Municipality Agreement, as applicable,

NOW THEREFORE, the parties hereby agree as follows:

1. Release of EPA's Liens and Waiver of Right of Redemption.
  - a. In the event that the City Property or the Town Property is transferred pursuant to the Bank Agreement, on the date specified in the Bank Agreement for delivery of a notice of release of lien to the Bank, EPA will send a copy of such notice to the City.
  - b. In the event that the Bank does not foreclose on the Properties (or portion thereof) pursuant to the Bank Agreement, EPA will so notify the City and County and will execute and deliver to the City and County a release of lien for the purpose of releasing EPA's CERCLA Lien and causing the lien to be discharged of record, and EPA consents that the City or County, as applicable, may cause the release of lien to be duly recorded to discharge the lien of record.
  - c. EPA agrees that effective upon the release and discharge of EPA's CERCLA Lien, pursuant to subparagraph 1.a. or 1.b. of this Municipality Agreement, EPA waives any right that it might have with respect to the lien, including, without limitation, the right to redeem the City Property or Town Property, as applicable, pursuant to federal law codified at 28 U.S.C. § 2410(c), but excepting any rights to compensation due to EPA pursuant to Paragraph 5 of this Municipality Agreement and the comparable provisions of the Bank Agreement and/or the County Agreement, whichever is finalized. Additionally, the United States agrees to release and waive any Windfall Lien it may have on such Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r).
2. Foreclosure by Bank of its Lien. The City acknowledges and agrees that the Bank may foreclose on the Properties through its action in the Cortland County Supreme Court, and the City agrees to cooperate with the Bank and EPA as needed to facilitate the sale and redevelopment of the Properties pursuant to the Bank Agreement. In the event that the Properties are sold for a sufficient amount pursuant to Section VI of the Bank Agreement, then, on the date of the transfer of the Properties, the Bank will pay to the City, in full satisfaction of the City's Tax Lien, the greater of \$302,881 (being the amount of City Taxes in arrears as of September 29, 2006) or fifteen percent (15%) of the proceeds from the sale of the Properties, after the Bank is paid \$150,000 attributable to the costs of marketing and selling the Properties. Any proceeds from the Bank's foreclosure sale remaining after the above payments to the Bank and the City, shall be distributed in proportion to the percentage

that the following amounts represent in relation to the combined total of said amounts: (1) for EPA, \$8,323,204; (2) for the Bank, \$8,434,911; (3) for the City, \$1,194,043 minus the greater of \$302,881 or fifteen percent (15%) of the proceeds from the sale of the Properties. If the City Property has not been sold through the Bank's foreclosure action in accordance with the terms set forth in this Paragraph 2, upon written notice by EPA, the City will foreclose its tax lien on the Property and shall, thereafter, transfer the Property to another entity, pursuant to Paragraph 4 below.

3. Proposals for Purchase and Redevelopment of the Properties. In the event that the City forecloses on the City Property, the City agrees to issue requests for proposals for purchase and redevelopment of the foreclosed-upon Property by qualified redevelopers.
4. Transfer of Properties.
  - a. The City agrees that it shall, except as may otherwise be agreed to in writing by EPA or as otherwise provided in subparagraph 4.b of this Municipality Agreement, transfer the City Property, for the highest sales price received in response to solicitations for proposals for sale or bids in a public auction in accordance with applicable law; provided that the City shall not be required to accept proposals or bids except from persons which it believes to be credible and responsible purchasers meeting the standards included in the solicitations for proposals or in the bidding package.
  - b. If the City does not transfer the City Property pursuant to Paragraph 4.a, the City may transfer the City Property to the County or to another local governmental entity within the County (such as another city, town or village), in connection with plans for redevelopment of the Property, which transfer may be for nominal consideration, provided that, in the event of such transfer, the City will require that such other local governmental entity agree to transfer the Property for the highest sales price received in public solicitations for proposals for sale or bids in a public auction in accordance with applicable law (provided that such local governmental entity shall not be required to accept proposals or bids except from persons which it believes to be credible and responsible purchasers meeting the standards included in the solicitations for proposals or in the bidding package) and the City shall require that such local governmental entity also agree to comply with all other provisions of this Municipality Agreement, including without limitation the payment provisions in Paragraph 5 and the notice provisions in Paragraph 6.
    - i. If the City or County, or the other local governmental entity, wishes to accept a proposal for less than the highest sales price, such transfer may be permitted with prior written approval of EPA.
    - ii. The City shall provide written notice to EPA, at 290 Broadway, 17<sup>th</sup> Floor, New York, New York 10007-1866, Attention: Buckbee-Mears Co. Site Attorney, of each offer to purchase all or a portion of the Properties received by the City within seven (7) business days of its receipt. The City shall provide written notice to EPA of the price for which it proposes to sell all or a portion of the Properties at least fifteen (15) days prior to the closing on the sale.
5. Payment to EPA.
  - a. The City, if it is the party selling a Property (or portion thereof), agrees that it shall, within sixty (60) days following the transfer of the Property, pay to EPA 50% of the selling price payable to the City, by the buyer(s) of the Property, after the City's actual

transaction costs associated with the sale have been paid to the City, which amounts shall not exceed a total of \$150,000.

- b. All such payments required to be made pursuant to this Paragraph 5 shall be made by check or wire transfer to the EPA Hazardous Substances Superfund in accordance with instructions provided by EPA to the City prior to the due date of such payment.
6. Notification to EPA of Status. Until such time as full payment has been made to EPA as provided by Paragraph 5 of this Municipality Agreement, the City shall advise EPA in writing at the address provided in Paragraph 4.c., not less than every ninety (90) days following the full execution of this Municipality Agreement until the date that full payment has been made pursuant to Paragraph 5, as to the status of the foreclosure of the City's Tax Lien, and the status of other significant related events including the solicitation of requests for proposals and responses thereto, and the transfer of the City Property to a developer or end user.
7. Public Comment. This Municipality Agreement shall be subject to a public comment period of not less than 30 days. EPA may modify or withdraw its consent to this Municipality Agreement if comments received disclose facts or considerations which indicate that this Municipality Agreement is inappropriate, improper, or inadequate.
8. Attorney General Approval. The Attorney General or his designee has approved the settlement embodied in this Municipality Agreement.

IN WITNESS WHEREOF, this Municipality Agreement has been signed by duly authorized representatives of the Parties.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By

\_\_\_\_\_  
Walter E. Mugdan  
Director, Emergency and Remedial Response Division, Region 2

Date: \_\_\_\_\_

CITY OF CORTLAND

By

\_\_\_\_\_  
Brian Tobin, Mayor

Date: June 6, 2012

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By

  
Walter E. Mugdan

Director, Emergency and Remedial Response Division, Region 2

Date:

June 8, 2012

CITY OF CORTLAND

By

\_\_\_\_\_  
Brian Tobin, Mayor

Date: \_\_\_\_\_

